

**RECEIVED
CENTRAL FAX CENTER**

Doc Code: AP.PRE.REQ


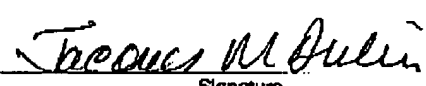
OCT 28 2005

PTQ/SB/33 (07-05)

Approved for use through 10/30/2005. OMB 0651-0000

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 24623-001US	
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" (37 CFR 1.8(a)) on <u>Oct. 28, 2005</u> Signature <u></u> Typed or printed name <u>Betty Oppenheimer</u>		Application Number 09/588,030	
		Filed June 5, 2000	
		First Named Inventor Rex J. Crookshanks	
		Art Unit 3628	Examiner Ojo O. Oyebisi
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. 24,067 Registration number _____ <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		<u></u> Signature Jacques M. Dulin, Esq. Typed or printed name 360-681-7305 Telephone number <u>Oct 27, 2005</u> Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.			
<input type="checkbox"/> *Total of _____ forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing this form, call 1-800-PTO-9199 and select option 2

Crookshanks SN 09/588,030

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**BEFORE THE PRE-APPEAL REVIEW PANEL**Inventor: **Rex J. CROOKSHANKS**

Atty. Docket No.: 24623-001 US REG

Application No.: 09/588,030

Examiner: **O. O. Oyebisi**Filed: **June 5, 2000**

Group Art Unit: 3628

Telephone: 571 - 272 - 8298

**RECEIVED
CENTRAL FAX CENTER****OCT 28 2005****Title: BUILDING CONSTRUCTION BID AND
CONTRACT MANAGEMENT SYSTEM,
INTERNET-BASED METHOD AND
COMPUTER PROGRAMS THEREFOR**

Notice of Appeal, Request and Arguments


Filed by Fax on: October 28, 2005

Fax: 571 - 273 - 8300

Certification under 37 CFR 1.8 (a)(1)(i)(B) and 1.6 (d)

Facsimile Date: October 28, 2005Facsimile No: 571 - 273 - 8300 Total Pages: 5

I hereby certify that the correspondence attached hereto is being transmitted under 37 CFR 1.6 (d), on the above stated date to the U.S. Patent and Trademark Office sent to the above facsimile number.

Name: Betty OppenheimerSignature: **ARGUMENTS SUPPORTING
REQUEST FOR PRE-APPEAL BRIEF REVIEW**Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Arlington, VA 22313-1450

Panel:

This is Applicant's statement of Arguments Supporting a Request for Pre-Appeal Brief Review pursuant to the pilot program effective 12 July 2005, per OG Notice of same date. This case is >5 years old.

The Notice of Appeal with correct fee is being filed same date in a separate paper, SB31.

This statement of Arguments is an attachment to SB33, Pre-Appeal Brief Request for Review, and demonstrates clear legal and factual deficiencies in the Rejections, including deficiencies in the prima facie case of the Examiner for the Rejections.

The Rejections of Claims 1 - 7 and 11 - 23, all the Claims Pending in the Application:

There have been 4 different Examiners and 4 OAs; Petition to Make Special (Applicant is 78) has not been acted-on; Examiners have failed to accord a telephonic interview; MPEP 2106 has not been followed.

There are three rejections of the 20 pending claims; see the Response to 3rd Office Action:

Casto 6,038,547, Anticipation under 102(e) as to claims 1 - 4, 6, 7, 11 - 15 and 21 - 23;

Casto in view of Wang 5,129,061 under 103(a) as to claim 5; and

Casto, PR Newswire, Bezos 6,029,141 under 103(a) as to claims 16 - 20.

Crookshanks SN 09/588,030

Claim Limitations Are Not Met by the References:

Although the claims do not stand or fall together, since all rejections rely on Casto, it will be most helpful to the Panel to point out the claim limitations that are not present in Casto, and not supplied by the secondary references.

Reviewers must understand that Casto is a **post-construction-work-done** verification and standard AIA form filling-out system. In contrast, the invention is directed to a **before-construction-work-is-done** bidding system, and does not involve filling out the Casto forms. Casto is post-work, not pre-work and cannot disclose, within the meaning of 102, solutions to problems of inaccuracy in the bidding process that he is not even aware of.

- Applicant's detailed analysis of Casto is in his Response to the 3rd Office Action dated May 2, 2005 (herein "A3R"), pages 17 – 20;
- Applicant's summary of the claimed invention is in A3R, pages 12 – 15 and 17 – 20; the entire Specification and Drawings are the best description of the claimed invention.

The following claim limitations (references are to claim and line # in A3R) **are not met**, as none of Casto, Wang, PR Newswire, or Bezos disclose or suggest:

1. Construction contract bidding, or the bidding process (C1, l 4), or enhancing the precision, clarity and completeness of defined construction work (C1, l 27);
2. Detailed nature of the work to be performed by a contractor or sub in a particular trade or category (C1, l 14 – 15); Casto states he "does not include details of the actual work to be done", Col 3, lines 60 – 61;
3. A plurality of construction plan sheet drawings (C1, l 9); digitized construction plan sheets (C1, l 13 – 14);
4. At least one electronic overlay (C1, l 13); applying the overlay to a digitized construction plan sheet (C1, l 13 – 14);
5. Aligning the overlay with the plan sheet (C1, l 16);
6. Ordered sets of coordinates of an overlay (C1, l 16);
7. Topological subdivision regions of said at least one construction plan sheet (C1, l 17);
8. Topological subdivision regions uniquely identifying, delineating and locating a selected portion of the construction work, object or element depicted graphically on said plan sheet (C1, l 18 – 20);
9. Construction project contracts or sub-contracts (C1, l 7 and 22);
10. Linking overlay-defined topological subdivision regions to said construction project contracts (C1, l 21 – 22);

Crookshanks SN 09/588,030

11. Linking to map the plan sheet graphical depiction of the work, object or element to the correct contract (C1, 1 21 – 24);
12. Incorporating the linked/mapped regions as graphical depictions of the scope of work to be performed into the contracts (C1, 1 25 – 26).
13. Enhancing the precision, clarity and completeness of the work to be performed in the contract (C1, 1 27);
14. Reducing errors and omissions in construction work thereafter performed under the contracts (C1, 1 27, 28);
15. Inputting and storing plan sheet drawings as digitized electronic data in memory (C2, 1 4 – 7);
16. 2-dimensional overlay, essentially orthogonal coordinates, to define areas on the plan sheets in which defined project work is graphically represented (C2, 1 9 – 11);
17. Storing the defined region areas that graphically represent project work to be done as data in a table in memory (C2, 1 16, 17);
18. Providing a table in memory that includes project subcontract work categories that includes work to be performed specific to the category (C3, 1 3 – 5);
19. A data structure that correlates linked defined subdivision topological regions to the work categories, including the work to be performed (C3, 1 6 – 8);
20. Providing a subcontract document file in memory and linking the data structure of Claim 1 to it (C4, 1 3 – 9);
21. Associating in memory a selected icon file with the subdivision regions, that is, the icon file links to the subdivision regions overlaid onto the plan sheets (C5, 1 4, 5);
22. Displaying an image of selected contracts (C5, step b);
23. Displaying a selected icon as an image on the contract image (C5, step c);
24. Retrieving an image of the subdivision region of a plan sheet upon clicking on the icon and displaying it (C5, step d);
25. Defining, on plan sheets: closed boundary boxes; trace paths; defining center points; and a grid system coordinate with plan sheets (C7, parts a) to d));
26. An Internet web server configured for remote access of the plans, contracts for bi-directional flow of information related to data, bids, comments, edits and changes related to the novel, claimed overlay, defining and linking method (C11);
27. Data system configured to store overlay grids, including essentially orthogonal coordinates, and a processor superimposing the overlay grids onto plan sheets for selection of coordinate information to define subdivision regions that uniquely bound and delineate selected portions of the

Crookshanks SN 09/588,030

- project construction work depicted graphically on the plan sheets, and for storing the boundary defining information, and linking means to link the boundary information to the contracts (C12);
28. First through fifth program code means of the specified type defined in Claim 14 (C14);
 29. Sixth code means for remote users to control the 1st – 5th code means of C14 (C15);
 30. A website providing services of interlinking construction plan images to related contracts for bidding (C16, 13 – 6);
 31. Operating the website of point 30 above (C16, 17 – 9);
 32. Configuring a data processing system for the interlinking of point 30 above, and operation of the website of point 31 (C16, 110, 11);
 33. Providing hyperlinks to specific affiliates defined in Claim 17 (C 17);
 34. Interactive inter-linking to user subscribers defined in claim 18 (C18);
 35. Secure project pages for interactive display/rendering of linked plan regions and contracts (C19);
 36. Browser and e-mail enabled system of claim 16, see 30 above (C20);
 37. Mapping of the special type defined in Claims 1 or 2 provided by almost-orthogonal equations having the property of progressively increasing transparency (C21 and C22); and
 38. Error detection algorithms that topologically prove completeness or non-duplication of topographical subdivisions of Claim 1 by at least one of comparing coordinates with contiguous areas and summing the total area of all subdivision regions on a plan sheet (C23).

Additional factual/legal errors include:

1. Equating the “regions” of Casto, which are merely addresses in a building (see A3R, p 18, l 13 – 23, and p 19, l 16 – 29), to Applicant’s subdivision regions on plan sheets that uniquely identify, delineate and locate selected work that is graphically depicted on the plans and yet to be done, is a factual error; Casto’s address partitions define X, Y, Z (Bldg, Floor, Apt) addresses, are physical site locations to review, not work to be done.
2. Equating Casto’s undisclosed way to “link” partitioning to a CAD model (Col 4, lines 22 – 26), which is merely the site location address identified on an image of the building, see Casto’s Fig. 3 to the unique type of linking defined in Applicant’s claims of work to be done in a uniquely identified topological region of a specific plan drawing to a specific contract, is a factual error.
3. Equating Casto’s invitation to have an architect, in the future in some un-disclosed way, link the CAD building model image to the partition addresses “after the bidding process”, to Applicant’s linking before and in aid of bidding, is factual error; Casto’s “disclosure” is merely an invitation to experiment, and as a matter of fact, not enabling such as to be a 102 or 103 basis.

Crookshanks SN 09/588,030

4. Representing that PR Newswire is an enabling disclosure is factual error; there is no "how to do" anything in it, it merely states that something is alleged to be ready to be done without disclosing to the level of 102 or 103 enablement; besides, it is only for appraisals, not construction bidding;
5. The opinions of the Examiner in the Final Rejection pages 12 – 15 that it would be obvious "to modify the system of Casto and Wang" or "by adapting the teaching of PR Newswire" or "adapting the teaching of Bezos to get more clients" is both factually and legally in error. Since PR Newswire teaches no structure or program architecture, and there is no showing in the Office Action of the source of the unstated nature of the modification, it fails the requirements of In re Cofer, and Ex parte Stern, A3R, pp 21, 22. Other applicable legal principles violated by the Office Action approach are cited in A3R, pp 16, 17, 22 and 23.
6. The Examiner's statements in the Response to Arguments in the FR pp 15 – 17 are factually and legally in error. For example, in asserting that combining the unidentified teachings of Casto and Bezos with "the incomplete teachings of PNC Bank", "the limitations of the claimed invention are completely anticipated" the Examiner has made an error of law.
7. On page 16, again asserting Casto has topological subdivisions created electronically on plan sheets is a factual error. It is legal error to assert Casto anticipates "all the aforementioned limitations".
8. It is legal and factual error to equate the wish-list of Casto's alleged Objects and Advantages (Col 2, 1 65 through Col 3, line30) as enabling disclosure; Casto's Summary is merely an allegation of broad advantages, not an enabling disclosure of overlays, topological subdivision regions (it is not clear the Office understands what those are), plan sheets, work descriptions, aligning, linking, orthogonal equations, transparency, error detection, etc., outlined above in points 1 – 38.
9. It is factual error to not understand Casto is an accounting program using hand-held data input device.
10. The failure to make this case Special and accord an Interview is denial of due process.

Respectfully Submitted,
Rex Crookshanks, Applicant


Jacques M. Dulin, Esq.
Counsel for Applicant, Reg. 24,067

October 27, 2005

Innovation Law Group, Ltd.
237 N. Sequim Avenue
Sequim, WA 98382-3456
Tel: 360 – 681 – 7305
Fax: 360 – 681 – 7315
eMail: dulin@InnovationLaw.com